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MASTER AND SERVANT—NONCOMPLIANCE WITH FACTORY LAW.—ASSUMPTION OF RISK.—Plaintiff, employed in the lumber mill of defendant, was required to work between two parallel sets of rollers, one of which, composed of what is known as "live rollers," was kept in motion by the motive power of the mill, by means of a steel shaft on the side next to where plaintiff worked. The shaft was uncovered and unprotected in violation of a statute requiring operators of mills to place safeguards over shaftings and other dangerous devices, and providing a penalty for failure to do so. While performing his regular duties, plaintiff's clothing caught on the shaft, drawing him down upon it and permanently injuring him. *Held*, that defendant is liable, not having complied with the statutory requirements, and could not avail itself of the doctrine of assumed risk. *Hall v. West & Slade Mill Company* (1905), — Wash. —, 81 Pac. Rep. 915.

This case affirms the decision in *Green v. Western American Co.*, 30 Wash. 87, 70 Pac. 310. Three of the judges dissented. It is agreed on all sides that, in the absence of statute and upon common law principles, the plaintiff should have been held to have assumed the risk. Did the statute in question change the common law doctrine of assumed risk? The following cases seem to support the principal case: *Baddeley v. Earl Granville*, 19 Q. B. D. 423, — 428, 17 Eng. Rul. Cas. 212; *Britton v. Great Western Cotton Company*, L. R. 7 Ex. 130-139, 19 Eng. Rul. Cas. 42; *Narramore v. Cleveland etc. Ry. Co.*, 96 Fed. 298, 37 C. C. A. 499, 48 L. R. A. 68; *Monteith v. Kokomo Wood Enameling Co.*, 159 Ind. 149, 64 N. E. 610, 58 L. R. A. 944; *Ashman v. F. & P. M. R. R. Co.*, 90 Mich. 567. Against the holding of the principal case are: *Nottage v. Sawmill Phoenix*, 133 Fed. 979; *Knisley v. Pratt*, 148 N. Y. 372, 42 N. E. 986, 32 L. R. A. 367; *Martin v. C., R. I. & P. Ry. Co.*, 118 Ia. 148, 91 N. W. 1034, 59 L. R. A. 698, 96 Am. St. Rep. 371. See also LABATT, MASTER AND SERVANT (1904), §§ 649 et seq. The present case must be distinguished from that class of cases arising under Employers' Liability Acts in which the employer's duty is expressed merely in general terms and no absolute or specific duty is enjoined. *Thomas v. Quartermaine*, 18 Q. B. D. 685; *O'Maley v. South Boston Gas Light Company*, 158 Mass. 135, 32 N. E. 1119, 47 L. R. A. 161; *Birmingham Railway v. Allen*, 99 Ala. 359. The principal case is also distinguishable from those arising in jurisdictions where a statute expressly provides, that in case the employer fails to comply with its terms, an employé shall not be deemed to have assumed the risk thereby occasioned, *e. g.*, the act of Congress making the use of automatic couplings on a railroad train compulsory. See U. S. Comp. St. 1901, Vol. 3, p. 3176. Again many cases, notably those decided in Illinois, hopelessly confuse the doctrine of assumed risk with that of contributory negligence. *Litchfield Coal Company v. Taylor*, 81 Ill. 590; *Catlett v. Young*, 143 Ill. 74, 32 N. E. 447; *Landgraf v. Kuh*, 188 Ill. 484, 59 N. E. 501. The distinction between the two is a vital one. In *Railway Company v. Baker*, 33 C. C. A. 468, 91 Fed. 224, where the right of action was based on the act of Congress providing expressly against the assumption of risk by the employé, the court held, that notwithstanding the provision, the defendant company was at liberty to show the contributory negligence of the plaintiff. It is believed that much of the apparent conflict in the cases is reconcilable in the light of the above considerations.